ORIGINAL

MANUSCRIPTED

IN THE

UNITED STATES SUPREME COURT

NO: 87-6997

EUGENE JOHN CARELLA,

Appellant/Defendant

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee/Plaintiff

ON APPEAL FROM ORDER AND JUDGMENT OF

THE SUPERIOR COURT, STATE OF CALIFORNIA,

FOR THE COUNTY OF LOS ANGELES

APPELLATE DEPARTMENT

Supplement to Jurisdictional Statement

MOTION TO VACATE, SET ASIDE, AND REVERSE

JUDGMENT AND ALTERNATIVE RELIEF

EUGENE J. CARELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

APPELLANT

COMES NOW EUGENE JOHN CAPELLA, appellant herein, in the aforecaptioned appeal, pursuant to 28 U.S.C. Sections 2104, 28 U.S.C. Section 2106, and Rules of Court 10, 11, 12 and the controlling mandates of this Court implementing said statutory provisions, and does respectfully move this Court for an Order reversing and otherwise vacating the judgment and orders now before this Court on appeal, as more fully appear in the Jurisdictional Statement and Appendix duly filed in this cause and specifically incorporated into this motion as EXHIBITS "B" and "C." Alternatively, should this Court require further and more extensive briefing on the gross constitutional invalidity of the state statutes, the subject of this appeal (e.g., Penal Code 484 and Vehicle Code Section 10851 and 10855), and the other constitutional infirmities and aberations engendered and set forth herein, Appellant respectfully prays this Court suspend, bar and prohibit any further action in or by the Los Angeles Municipal Court, Beverly Hills Judicial District and Los Angeles Superior Court, Appellate Department, each court having been divested of all jurisdiction in the above-entitled cause by virtue of the Notice of Appeal filed on April 11, 1988 and the perfecting and docketing of the subject appeal in conformity with the Rules of this Court and law, pending a final adjudication of this Appeal by the Court. The per se constitutional invalidity of the two state statutes by which the criminal misdemeanor prosecution was commenced against Appellant, and by which his false conviction and false imprisonment have been carried out, conjoined with the other constitutional injuries recited in his Appeal as more fully appears in the Jurisdictional Statement attached herein compels that all

state proceedings, including further execution upon the null and void judgment of conviction and void appellate remittitur affirming said judgment be stayed and suspended and/or vacated by this Court pursuant to the plenary powers vested in this Court by virtue of 28 U.S.C. Section 2106 (see, Grosso vs. United States, 390 U.S. 62, 19 L.Ed. 2d 906, 88 S.Ct. 709 (1967); Haynes v. United States, 390 U.S. 85, 19 L.Ed. 2d 923, 88 S.Ct. 722 (1967); and United States v. Covington, 395 U.S. 57, 23 L.Ed. 2d 94, 89 S.Ct. 1559 (1969)] and authorizing the Court to take action that is "just under the circumstances."

Further, there is substantial appellate precedent for this Court to utilize 28 U.S.C. Section 2106 jurisdiction to invoke its inherent powers to throw out and set aside a jury verdict and judgment procured by fraud and so infirmed, gross and contrary "to right or reason", and to enter an appropriate judgment of its own by way of remittitur in the cause directed to the trial court. Caddy v. American Home Products, 557 F.2d 36 (8th Cir. 1977). Further authority commanding this Court to take the action demanded by Appellant of throwing out and setting aside the void judgment and/or staying and suspending all proceedings and effectiveness of Orders in the trial court and/or Appellate Department in the alternative pending adjudication of the Appeal on the merits and after full briefing on a complete record is authorized by Rule 11 of the Rules of this Court (Supreme Court).

The illustrative note contained in Rule 11 states:

> When notice of appeal to United States Supreme Court has been filed within the time prescribed, an appeal has been taken and district court thereafter is without jurisdiction---
>
> [emphasis added]

See, Schemgg v. School District, 184 F.Supp. 381, 3 FRD 2d 1034; Associated General Contractors v. Secretary of Commerce of United States, 459 F.Supp. 766, 77 FRD 3d 31 (1977 Cal. C.D).

The force of 28 U.S.C. Section 2104 is operative in the instant appeal and its effects can be assimilated to the present appeal. The pertinent section states in relevant portion that "an appeal to the Supreme Court from a state court judgment shall be taken in the same manner and under the same regulations and shall have the same effect as if the judgment and decree appealed from had been rendered in a court of the United States." [emphasis added.]

These provisions of the United States Code, taken in combination with the authorities cited hereinabove, together with the Supremacy Clause of the United States Constitution, constrain both state courts, e.g., Los Angeles Municipal Court and Los Angeles Superior Court Appellate Department, from acting while this Appeal is still pending in this Court and proscribe and prohibit the State of California from acting in any manner which would derogate from the jurisdiction of this Court.

Accordingly, this Court is compulsed to stay and suspend and/or vacate all further state action and proceedings pending a full adjudication of this Appeal.

WHEREFORE, Appellant, on the basis of the premises advanced herein--together with all those reasons more fully recited in the Jurisdictional Statement and Appendix--and supporting Declaration attached herewith, respectfully prays

that an Order issue forthwith from the entire court granting Appellant's Motion to Set Aside, Vacate, and Reverse the state judgment (the subject of this Appeal); that an Order further issue declaring the constitutional invalidity of the state statutes attacked in this Appeal, v.g., Penal Code Section 484 and Vehicle Code 10851 and 10855 for the reasons set forth in the Jurisdiction Statement attached herewith and further direct that Appellant be discharged from the onus of the void judgment and conviction forthwith and because of the despicable and irreversible constitutional injuries already inflicted upon Appellant, the State of California be prohibited and enjoined from carrying out a subsequent prosecution. Alternatively, should this Court not wish to act prior to full briefing and submission of the Appeal, Appellant demands this Court promptly issue an Order to the Los Angeles Municipal Court (Beverly Hills Judicial District, Division 5) and Los Angeles Superior Court (Appellate Department) commanding and directing that all proceedings be suspended and stayed or forthwith vacated pending a complete and full disposition of the instant appeal by the Court and pending further written order of this Court; and for such additional relief this Court deems necessary and proper in light of the gross constitutional injuries asserted and sustained by Appellant.

DATED: May 23, 1989

Respectfully submitted:

BY: _____
EUGENE JOHN CASELLA, ESQ.
Appellant

DECLARATION OF EUGENE J. CARELLA, ESQ.

I, EUGENE JOHN CARELLA, declare and state as follows:

1. That I am the Appellant herein.

2. That on April 11, 1988 I filed a Notice of Appeal to the United States Supreme Court pursuant to 28 U.S.C. Section 1257(2) on the basis of the per se constitutional invalidity of the California state penal statutes as more fully appear in the Jurisdictional Statement and Appendix on file with this Court in the subject appeal and incorporated into this motion as EXHIBITS "B" and "C".

3. That the questions I presented in the Jurisdictional Statement filed with the Court on May 17, 1988 demonstrate a gross and egregious violation of Appellant's constitutional rights guaranteed by the Sixth and Fourteenth Amendments, and Article 1, Section 9 and Section 10, and other gross constitutional infirmities and aberrations requiring this Court redress and take jurisdiction.

4. That the subject Appeal has been duly docketed by the Clerk of this Court and is pending for review before this Court, and I have been so advised by a clerk of this Court of its docketing on May 19, 1988.

5. That in the Notice of Appeal I filed April 11, 1988, I specifically demanded that the Clerk of Court possessed of the trial record forthwith prepare the Clerk's Record and certify it forthwith to this Court in accordance with the Rules of this Court.

EXHIBIT "A"

6. That the Notice of Appeal I filed attacks the state statutes as being unconstitutional and divested the Los Angeles Municipal Court (Beverly Hills Judicial District) and Los Angeles Superior Court (Appellate Department) of all jurisdiction over the subject litigation (see Rule 11 and Schempp v. School District, 184 F.Supp. 381, 3 FRD 2d 1034 when it was filed on April 11, 1988.

7. That I was ordered to appear on April 12, 1988 by the trial judge Judith Stein and advised that my "failure to appear on said date pursuant to the court's order would result in a warrant of arrest being served upon you [appellant]."

8. That I was compelled to appear at the Los Angeles Municipal Court Beverly Hills Judicial District, Division 5, and to comply with the Order of the court, and advised the trial court that a Notice of Appeal was filed with the United States Supreme Court divesting that court of all jurisdiction.

9. That said trial judge (even though possessing no jurisdiction and under threat of arrest) continued the matter on the remittitur of the Los Angeles Superior Court (Appellate Department) until May 27, 1988 at 2:00 P.M. (PST).

10. That Rule 11 of the Rules of this Court and interpretative notes confirm that the trial court and appellate department were preempted of all jurisdiction over the subject litigation on April 11, 1988 and have no jurisdiction to execute upon the judgment or direct further proceedings until this Court completely and fully disposes of the substantial constitutional challenges raised by Appellant in this Appeal.

(See, also Associated General Contractors v. Secretary of Commerce, 459 F.Supp. 766, 77 FRD 3d 31 (1977 Cal. C.D.).

11. That I have also apprised this Court that the proceedings and prosecution carried out against me are not only predicated upon unconstitutional state statutes grossly offensive to Appellant's constitutional rights [see Jurisdictional Statement], but constitute a conscious and deliberate criminal and malicious abuse of criminal process and proceedings against me, carried out by the intelligence apparatus of the United States government.

12. That I further show this Court that the state statutes whose validity are attacked in this Appeal and the complained-of constitutional errors and infirmities engendered thereunder stand in flagrant contradiction and affront to this Court's mandates of In Re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.E. 2d 368 (1970); Sandstrom vs. Montana, 422 U.S. 510, 99 S.Ct. 2319, 53 L.Ed. 2d 281 (1977); Mullaney v. Williams, 421 U.S. 684, 45 S.Ct. 881, 44 L.Ed. 2d 508 (1975); Francis vs. Franklin, 105 S.Ct. 1965, 85 L.Ed. 2d 344 (1985); Patterson vs. New York, 432 U.S. 197, 97 S.Ct. 2319, 5 L.E. 2d 281 (1977).

13. That I also show that my Sixth and Fourteenth Amendment rights have been irreparably injured and abridged by the aforereferenced criminal process invidiously commenced against me to destroy my livelihood, federal practice and reputation.

14. That I specifically invoke this Court's jurisdiction pursuant to 28 U.S.C. Section 2106 which states that:

> The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree or order of a court lawfully brought before it for review, and may remand the cause and direct entry of such appropriate judgment, decree, or order or require such further proceedings to be had "as may be just under the circumstances."

15. That I specifically commend to the Court's attention the broad jurisdiction conferred upon it by 28 U.S.C. Section 2106 and the complete and plenary jurisdiction conferred by such statute to criminal proceedings on appeal where there has been an egregious miscarriage of justice carried out against appellant, such as in the instant case. (See, Grosso v. United States, 390 U.S. 62, 19 L.Ed. 2d 906, 88 S.Ct. 709; Haynes v. United States, 390 U.S. 85, 19 L.Ed. 2d 923, 88 S.Ct. 722, United States v. Covington, 395 U.S. 5, 23 L.Ed. 2d 94, 98 S.Ct. 1559.)

16. That I further advise the Court that the plenary grant of jurisdiction conferred by 28 U.S.C. Section 2106 has been invoked by this Court to grant relief to an appellant not even requested by him in his appeal, where the relief was necessary in the interest of justice. (See, Forman v. United States, 361 U.S. 416, 4 L.Ed. 2d 412.)

17. That I state that in my reasoned and professionaly considered opinion and judgment, the constitutional questions I have presented in this Appeal will be disposed of and

concluded in a manner favorable to my cause and that this Court after careful and due deliberation will act to strike down and invalidate the state statutes challenged by me as unconstitutional on their face and the subject of this appeal.

18. That I will sustain further irreparable harm and injury if this Court permits the trial court to continue to carry forward with the void and malicious criminal proceedings against me in absence of all jurisdiction to do so, and the injuries to my person, livelihood, reputation, and the like already visited upon me will be further unnecessarily exacerbated and expanded.

19. That I have been subjected to the false misdemeanor criminal proceedings maliciously inspired against me and based upon constitutionally invalid state statutes for a period of three (3) years and I have been already falsely imprisoned for over sixty (60) days, pursuant to this false proceeding whose purpose, object and intent was to seek to discredit, smear and destroy my profession and background and integrity and to interfere with substantial litigations being prosecuted by me, which harm has already occurred.

20. That I complained to the State Bar of Colorado of which I have been a member since 1968, commencing back in 1980, of a concerted criminal interstate conspiracy directed against me and to the U. S. Department of Justice and Federal Bureau of Investigation, dating back to 1977 of a concerted criminal interstate racketeering conspiracy to destroy my federal practice because of my advocacies under various federal statutes and, particularly, the federal provisions of ERISA (Employee Retirement Income Security Act of 1974), and the

representation of various causes and clients before this Court and other federal forums.

21. That I am informed and thereupon state the subject false criminal proceedings and judgment now before this Court on appeal which pertain to a "rental car I received pursuant to a written rental contract" are an extension of, and relate to, the criminal interstate enterprise I commended to the U. S. Department of Justice and Federal Bureau of Investigation.

22. That I further state the statement of my personal livelihood and accomplishments attached herewith are true and correct statement of my professional livelihood and accreditation. (See EXHIBIT "A-1" attached herewith).

23. That I further state the subject proceedings instigated against me are false, vexatious, and calculated and designed to harm, oppress and disparage and discriminate against me and to collaterally disadvantage me and destroy my livelihood and profession and I specifically request that the Court act now to vacate, reverse, and set aside the false misdemeanor and judgment now before it on appeal and to invalidate the state statutes as unconstitutional and direct them to be stricken down.

24. That I specifically demand that this Court direct and order the trial transcripts of proceedings in Case No. M83675 be prepared by the Court Reporter and made a part of the Record on this Appeal and furnished to me at public expense.

25. That I specifically state the Transcripts completely "document" all the grounds for appeal presented (24 of them) presented to the Appellate Department of the Los Angeles Superior Court, and that I need the subject transcripts to vindicate all those issues raised by me on appeal before this Court.

26. That these vexatious proceedings now before this Court in combination with the aforereferenced conspiracy have "financially debilitated" me and I have been adjudged indigent by this Court. Accordingly, I am entitled to the Trial Transcripts as a matter of constitutional right and respectfully demand the transcripts be prepared, filed and furnished to me at public expense in their true and correct form. (See, In Re Armstrong, 126 C.A. 3d 565, 178 CR 902 (1981).

27. That I have been further advised that the trial judge and third parties acting in concert one with another are seeking to destroy, alter, and have spoiled the reporters notes and trial transcripts so as to cover up the criminal actions carried out against me by the intelligence community at the time of trial.

28. That I specifically invoke the Supremacy Clause of the United States Constitution as a bar and preemption of any further jurisdiction of the lower courts while this appeal is pending in this Court.

29. That I further believe and thereupon state the Administration has sought to cover up their criminal misconduct and undertakings and violations of my rights and person by falsely placing this entire proceeding under a "national security

blanket", thus depriving me of my constitutional rights to vindicate these heinous actions undertaken against me. I am the victim of a continuing federal crime and I demand this Court's intervention in having the crimes enjoined against me as it violates my federal constitutional and civil rights and my human rights in this country.

30. That I further state the United States Supreme Court [this Court] has obligatory jurisdiction to adjudicate the constitutional invalidity of the state statutes raised by me as Appellant in the aforereferenced appeal and the Court is required as a matter of law to decide the questions presented in this Appeal. (See, U.S. Ex Rel Wojtycha v. Hopkins, 517 F.2d 40 (1975).

I declare the foregoing is true and correct to the best of my knowledge and ability.

Executed on this 25 day of May 1988 in Los Angeles, California, under penalty of perjury.

BY: _____
EUGENE P. CARELLA, ESQ.

PROFESSIONAL AND EDUCATIONAL VITAE

ROBERT JOHN CABELLA

I. EDUCATIONAL ACHIEVEMENTS:

Elementary Education: High School

Darien High School, Darien, Connecticut.
Graduated 1961; Top 20%; Accepted for Study at Colgate University, University of Connecticut and Denison University; President of Student Council; National Leadership Conference; and Varsity Athletics.

College Education: Bachelor of Arts (B.A.)

Denison University, Granville, Ohio (1961 thru 1965)

Awarded Bachelor of Arts Degree (Political Science) - June 1965

Member: Phi Gamma Delta Social Fraternity.

Advanced Education: Doctor of Jurisprudence (J.D.)

University of Toledo School of Law (1965 thru 1968)
Awarded Juris Doctorate Degree (June 1968)

Licensed and Admitted to Practice Law:

State Supreme Court of Colorado (October 1968)
U. S. District Court of Colorado (October 1968)

II. VOCATIONAL EXPERIENCE: (Corporate and Business)

Mutual Life Insurance Company of New York (MONY)
Advanced Underwriting and Estate Planning Consultant (1968-1969): Primary technical, marketing, and consulting accountability for professional, business, and executive estate and insurance programs; Retirement and pension planning analysis; Advanced underwriting seminars (conducted at various locations throughout the country); Training responsibilities for MONY field underwriters (United States)

1740 Broadway, New York City, New York.

II. Continued --

U. S. Trust Company of New York
Financial Planning Consultant and Account Executive for Senior Executives of FORTUNE 500 Corporation (1969-1970): Primary consultant accountability for senior corporate executive clientele; direct corporate interface with senior executive echelon and development of comprehensive financial blueprints, including corporate-sponsored benefit programs and capital accumulation and estate conservation strategies for corporate executives.

45 Wall Street, New York City, New York.

Groesbeck Financial Advisors, Inc.
Senior Vice President of Corporation Division (1970-1973); Comprehensive, technical, marketing and consulting responsibilities for the financial planning requirements of senior corporate executives of FORTUNE 500 corporations. Managerial, supervisory and training responsibilities of technical and consulting support staff personnel (twenty (20) persons); accountability for the marketing, technical design and profitability of corporate financial services addressed to high-income corporate executives of FORTUNE 500 companies; monitoring of capital asset accumulation and estate strategies mandated by tax and investment changes.

1900 Avenue of the Stars, Century City
California 90067.

[redacted]. Hay Associates (1973-1974)
[redacted]ector of Marketing, Executive Financial Counselling [redacted]ervices: Exclusive and primary marketing; nationwide accountability for Edward N. Hay Associates executive financial counselling services designed to serve CEO's, presidents and other senior executives of FORTUNE 500 companies throughout the United States: Responsibilities for new market penetrations and business development.

Rittenhouse Square, Philadelphia, Pennsylvania.

II. Continued --

Inverness Planning Corporation (1974 thru 1976)
Vice President, Financial Planning Services - Corporate and Professional Executive Clientele): Direct consulting and marketing responsibilities for executive financial counselling programs and services to high-income corporate and professional executives; structuring and development of executive financial plans, including corporate-sponsored benefit programs (cash and non-cash); management incentive plans, investment plans (conventional portfolio and tax-advantaged plans); tax and estate conservation planning; liquidity analysis for high-income corporate and professional executives nationwide.

345 Park Avenue, New York City, New York

and

1880 Century Park East, Century City,
California 90067.

III. VOCATIONAL EXPERIENCE: (Legal and Professional)

Diversified, Independent Federal Legal Practice (1976-1988)

Federal Trial and Appellate Practice: Primary lead counsel and litigation responsibilities (trial, as well as appellate) for complex federal litigations under the Employee Retirement Income Security Act of 1974 (ERISA statute) and other labor and regulatory statutes); nationwide practice before various federal courts and federal administrative agencies; federal pension, labor, commercial, bad faith, malpractice and personal injury litigation expertise; sophisticated and extensive nationwide appellate skills and practice before various federal circuit courts in the United States and the U. S. Supreme Court; diversified and extensive trial preparation skills and considerable trial acumen in federal forums; preparation of appellate briefs, petitions and documents for various appellate courts and the U. S. Supreme Court.

IV. PERSONAL CHARACTERISTICS:

Distinguished professional acumen and expertise; strong and decisive professional and technical commitments; high personal integrity; intellectually decisive and accountable; positive client skills within executive

IV. PERSONAL CHARACTERISTIC (continued)

and professional societies; high intelligence quotient; self-motivated; confident and accepted at all professional and corporate echelons; outstanding written and verbal skills; high positive visibility within senior corporate and professional communities.

V. COMPENSATION BACKGROUND:

Prior to inception of independent legal practice in 1976, my compensation level was in the five figures plus incentive compensation and corporate perquisites (expense accounts, etc.) Current compensation is negotiable based upon the position, accountabilities and consideration of my extensive professional and business accomplishments, expertise and substantial legal and corporate experience and accomplishments.

VI. PROFESSIONAL ASSOCIATIONS, HONORS & MEMBERSHIPS:

A. Bar Memberships: (State and Federal)

State Supreme Court of Colorado
United States District Court of Colorado
United States Court of Appeals for the District of Columbia
United States Court of Appeals for the Fifth Circuit
Supreme Court of the United States
American Bar Association (past member for 12 years)
Association of Trial Lawyers of America
Practice in other federal trial and appellate forums in the United States.

B. Accreditations:

American Compensation Association (Honorary Member)
Presented Award of Distinction

Who's Who In American Law (Distinguished member)
(1987-1988, 5th Edition)

Who's Who In California (Distinguished member)
(1987-1988, 17th Edition)

VI. Continued --

B. Accreditations - continued

Who's Who In California (1988)
(Distinguished member)

International Platform Association (1988)
(Participating Member)

Who's Who In Emerging Leaders (1988)
(Selected Member)

Selected Delegate to the Dwight Eisenhower
Ambassador to Ambassador Program (1988)

Who's Who in the World, 9th Ed. (1988)
(Selected Member)

VII. REFERENCES UPON REQUEST:

Business, personal and professional references will be furnished upon request.

BY: _____
EUGENE JOHN CARELLA

P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

CERTIFICATE OF SERVICE

I, Eugene J. Carella, the undersigned, hereby certify and swear that on this 25th day of May 1998 I served a true and correct copy of the within MOTION TO VACATE, SET ASIDE, AND REVERSE JUDGMENT AND ALTERNATIVE RELIEF on all parties of record, interested persons, and Clerk of the Los Angeles Municipal Court, Beverly Hills Judicial District, and Clerk of the Los Angeles Superior Court Appellate Department, by first class mail, postage-prepaid, addressed as follows:

Ira Reiner
District Attorney
849 S. Broadway
11th Floor
Los Angeles, CA 90012

John Van de Kamp
Attorney General
State of California
6000 State Building
350 McAllister Street
San Francisco, CA 94102

Judith Stein, Judge
Los Angeles Municipal Court
Beverly Hills Judicial District
9355 Burton Way
Beverly Hills, CA 90210

Fred Woods, Jack Newman,
Alfred Margolis, Robert
Robertson, Judges
Los Angeles Superior Court
Appellate Department
111 N. Hill St., Rm. 607
Los Angeles, CA 90017

Paul Woods
Air Bail Bonds
121 E. Regent St.
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Eugene J. Carella